

## ACT 146

H.B. NO. 2589

A Bill for an Act Relating to Vessels.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 200-41, Hawaii Revised Statutes, is amended to read as follows:

~~“[§200-41] Disposition [by chairperson] of certain abandoned vessels.~~

(a) Any vessel ~~[which:~~

- ~~(1) Has been left unattended for a continuous period of more than thirty days; and~~
- ~~(2) Is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property;~~

~~may be caused by the chairperson to be taken into custody and disposed of pursuant to this part.] may be deemed abandoned if the vessel has been moored or otherwise left in the waters of the State or on public property contrary to law or rules having the force and effect of law, or left on private property without authorization of the owner or occupant of the property if:~~

- ~~(1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;~~

- (2) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- (3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;
- (4) The vessel registration records of the department of land and natural resources and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or
- (5) The requirements of section 200-52 are met.

(b) The determination whether a vessel is abandoned on public property may be made by:

- (1) The chairperson, with regard to public property under the jurisdiction of the department of land and natural resources; or
- (2) Any other state department or agency through its director, with regard to public property within the department or agency's respective jurisdiction; or
- (3) Any county through its mayor or the mayor's designee, or chief of police, with regard to public property within the respective county's jurisdiction; provided that the department shall provide to the respective county access to the department's vessel registration and marine document records or those of the United States Coast Guard for the purposes of this section.

Once a vessel is deemed abandoned, the appropriate official under this subsection may direct and cause the vessel to be taken into custody and disposed of pursuant to and in the manner provided in this chapter.

(c) All vessels abandoned on private property shall be the responsibility of the private property owner."

SECTION 2. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

**"§200-42 Notice to owner.** [~~Upon~~] A state or county agency, upon taking custody of any vessel, [a written notice] shall immediately [be posted] post a written notice on the vessel and send a duplicate original [sent] by registered or certified mail, with a return receipt requested, to [the] any owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at their respective last known address on record with the department or the United States Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. Such owner, lien holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing[-] pursuant to chapter 91 from the state or county agency that took custody of the vessel. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given [by the department] for the impoundment of the vessel. The hearing [must] shall be held within five working days of the [department's] state or county agency's receipt of the written request."

SECTION 3. Section 200-44, Hawaii Revised Statutes, is amended to read as follows:

**“§200-44 Possession by interested party.** Any person having an interest in the vessel taken into custody may take possession of the vessel prior to the date of public auction upon payment to the [department] state or county agency that took custody of the vessel of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by [the department] that state or county agency in connection with the vessel. If the person taking possession of the vessel is not the registered or documented owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the [department] state or county agency, which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt.”

SECTION 4. Section 200-45, Hawaii Revised Statutes, is amended to read as follows:

**“§200-45 When public auction not required.** Public auction shall not be required when the appraised value of any vessel is less than \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination, after public notice of intended disposition has been given at least once, the [department] state or county agency that took custody of the vessel may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency.”

SECTION 5. Section 200-46, Hawaii Revised Statutes, is amended to read as follows:

**“[§200-46] Effect of sale.** The transfer of interest by sale hereunder shall be evidenced by a bill of sale from the [department,] appropriate state or county agency, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.”

SECTION 6. Section 200-47, Hawaii Revised Statutes, is amended to read as follows:

**“§200-47 Disposition of proceeds.** [~~The department~~] A state or county agency that sells a vessel pursuant to this part shall deposit that portion of the proceeds of the sale of [a] the vessel that represents the mooring or other fees and charges due the [department,] agency, the expenses of the auction, and any other expense incurred by the [department] agency in taking into custody and disposing of an abandoned vessel, derelict vessel, or vessel impounded under section 200-16, into the boating special fund or other state or county fund, as appropriate, from which the expenses incurred in connection with the vessel were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction, and the other expenses incurred by the [department] agency in taking into custody and disposing of the vessel, the [department] agency may bring an action for the deficiency in a court of appropriate jurisdiction against the registered or docu-

mented owner or any person who had an interest in the vessel when custody was taken by the [department] agency.”

SECTION 7. Chapter 200, Hawaii Revised Statutes, is amended by amending the title of part IV to read as follows:

**“PART IV. VESSELS ABANDONED ON ~~[BUSINESS]~~ PREMISES OF PERSONS ENGAGED IN REPAIR BUSINESS, PRIVATE MARINAS, ~~[AND]~~ YACHT CLUBS, OR ON OTHER PRIVATE PROPERTY”**

SECTION 8. Section 200-51, Hawaii Revised Statutes, is amended to read as follows:

**“§200-51 Disposition of vessels ~~[by persons in]~~ abandoned on the premises of a vessel repair business, private ~~[marinas, or] marina, yacht ~~[clubs.] club, or other private property.~~~~ When any person abandons a vessel upon the premises of a vessel repair business, a private marina, ~~[or] a yacht club, or other private property,~~ the owner of the vessel repair business or private marina, or the owner’s representative~~[-or];~~ the designated representative of the yacht club~~[-];~~ or the owner of other private property, may sell or dispose of the vessel in ~~[accord] ac-~~ cordance with this part.”**

SECTION 9. Section 200-52, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§200-52 When vessel deemed abandoned~~[-]~~ on the premises of a vessel repair business, private marina, or yacht club.”**

SECTION 10. Section 200-53, Hawaii Revised Statutes, is amended to read as follows:

**“§200-53 Sale or disposition of vessel.** When a vessel is abandoned, the owner of the vessel repair business~~[-]~~ or private marina, or the owner’s authorized representative~~[-or];~~ the designated representative of the yacht club~~[-];~~ or the owner of other private property, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five calendar days after the publication of the advertisement. Upon the sale or disposal of the vessel under this part, the owner of the vessel repair business~~[-]~~ or private marina, or the owner’s authorized representative~~[-or];~~ the designated representative of the yacht club~~[-];~~ or the owner of other private property, shall file an affidavit with the department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed of pursuant to this part.”

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2012; provided that county responsibility under this Act for each county shall commence:

- (1) Upon a county’s access to vessel registration and marine document records of the department of land and natural resources or the

United States Coast Guard as required in section 200-41, Hawaii Revised Statutes, in section 1 of this Act; or

(2) On January 1, 2013;  
whichever is earlier.

(Approved June 21, 2012.)